



## OPEN MEETING AGENDA ITEM

June 19, 2020

Docket Control  
Arizona Corporation Commissioners  
1200 W. Washington Street  
Phoenix, AZ 85007-2996

RE: Docket No. WS-02987A-18-0050, In the matter of the Commission's investigation of the billing and water quality issues of Johnson Utilities, LLC.

Chairman Burns and Commissioners:

I am submitting this letter to offer my perspective on the proposals currently being discussed in this docket regarding the Section 11 Wastewater Treatment Plant. My companies own the Magma Ranch and Skyline Village master planned communities in Johnson Utilities ("JU") service territory, both of which are designed to take service from the Section 11. We have been unable to use our land and our developments have now been suspended for over 18 months due to Section 11's ongoing compliance problems and the Commission's moratorium. The costs associated with these delays are significant, as our developments represent hundreds of millions of dollars in investment and are situated in one of the fastest growing housing markets in the United States.

Since the start of the moratorium we have been working closely with EPCOR in order to find a solution for Section 11. We engaged Stantec per EPCOR's recommendation to help find solutions and alternatives. To date, we have spent more than \$350k for outside consultants to provide a Section 11 solution. We have an excellent working relationship with EPCOR and ADEQ and remain in constant communication.

It is our understanding that the Commission's current preferred plan will take a minimum three to five years (without litigation) before there is a working alternative to Section 11. As you can imagine, the prospect of it taking so long before my development rights can be restored is very concerning. I know there are differing perspectives on the issue of the future of Section 11 and often, as landowners, we have felt trapped in the middle of a fight without access to full information. Instead of simply taking the word of the parties proposing the various solutions, we have recently spent a great deal of time and resources trying to independently evaluate the best path forward for Section 11. As you know, the proposals for the future of Section 11 include; 1) the BioLac conversion; and 2) the replacement of Section 11 with the Copper Basin WWTP.



Our initial review indicated that the BioLac solution held promise, so we further engaged Stantec to perform a review. We have recently received the results of Stantec's review, and they have verified that the BioLac solution will be effective and will substantially improve all aspects of Section 11. Please refer to the attached memorandum from Stantec for more detailed information on their review.

Our investigation has confirmed for us that the BioLac solution is preferable to the construction of the Copper Basin WWTP even though Copper Basin WWTP may be the ultimate long-term regional solution. BioLac is faster to implement, less expensive, and both ADEQ and Stantec have confirmed its viability.<sup>1</sup> The BioLac solution will take less than 18 months to implement, while Copper Basin will take at least another 3-5 years to construct. The conversion would cost substantially less than Copper Basin as well – an estimated \$38 million less, in fact, as current estimates for the BioLac solution total \$12 million vs. \$50 million for Copper Basin. Finally, BioLac is already permitted, while no permits have been issued for Copper Basin. For these very reasons, we offered comments in support of the BioLac solution to ADEQ.<sup>2</sup>

The following Table summarizes our findings and compares the two proposed solutions with regard to the estimated time to build, the permitting status, project cost, treatment capacity when built, ADEQ's opinion, and their funding status. We believe this Table illustrates why the Commission should take a very careful look at the BioLac option before moving forward with a project that will have such a significant impact on private property rights.

#### **Section 11 Alternatives**

	<b>BioLac Conversion</b>	<b>Copper Basin</b>
Timeline	15-18 months	3-5 years (More with Litigation)
Status of Permitting	Fully Permitted	Requires Zoning and ADEQ Permits
Project Cost	Approximately \$12 million	Approximately \$50 million
Treatment Capacity	3.2 MGD	3.0 MGD
ADEQ Opinion	Viable Solution	Viable Solution
Funding Options	Owner Committed to Fund	Owner Likely to Litigate

We recognize that the BioLac solution is a JU proposal, and therefore it is being met with skepticism by many of the stakeholders in this proceeding. Nonetheless, I am hopeful the

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<sup>1</sup> ADEQ confirmed the BioLac solution's viability in its May 26<sup>th</sup> Compliance Schedule for JU.

<sup>2</sup> Our comments are included with the Compliance Schedule as Attachment D.





Commission can set aside the animus and distrust of JU and instead look to the problem and the merits of the various options in front of it. We have thoroughly and independently vetted the BioLac solution and verified its efficacy. To be clear, we have a significant stake in finding a solution that is robust and that will support the region's growth thus putting an end to this period of interruption. In other words, our interests are completely aligned with the interests of the Commission. As a result, we hope you will carefully consider our perspective.

Further, to the extent that JU's willingness to fund the BioLac solution may be suspect, we suggest that JU be required to certify its funding commitment on the record in this proceeding. This could be accomplished through either a signed contract or other enforceable method that is agreeable to the parties.

We are concerned that if the Commission moves ahead with the Copper Basin proposal, the owner of JU will refuse to fund it. This will spur additional litigation which will take additional time. If the Commission instead attempts to have the construction funded via debt, we are afraid the market will be hard pressed to lend to a utility embroiled in such a hostile legal dispute. We fear this will either drive up the cost to borrow or drag out the process even longer. Either way it's bad for ratepayers and landowners.

At this point, we are left with no choice but to strongly encourage the Commission to move forward with the BioLac solution. If the Copper Basin proposal is selected instead, we, along with similarly situated landowners, face the prospect of development being suspended for the better part of a decade after additional litigation and challenges are fought out. To make matters worse, ratepayers would be burdened with millions of dollars in unnecessary plant expenditures. We understand the Commission is in a difficult position but we are hopeful that a review of the facts surrounding a viable solution that ADEQ deems acceptable, and that is quicker and less expensive will demonstrate to you that the BioLac solution is the best solution under the circumstances.

Thank you for your attention to this important matter.

Sincerely,  
//S//  
Nariman Afkhami  
CEO  
AREAD